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CASE & COMMENT

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24 LEd 259
71 Fed 486
60 Wis 157
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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 5 JANUARY, 1899. No. 8

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,

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Entered at postoffice at Rochester, N. Y., as second-class mail matter.

William L. Putnam.

The historic name of Putnam has been worthily borne in different states and in various positions in life. On the bench of the United States circuit court and court of appeals in the first circuit it is now honorably borne by William Le Baron Putnam, of Portland, Maine.

Judge Putnam is a native and life-long resident of Maine. He was born in Bath on May 26, 1835. Educated at Bowdoin College, he graduated in 1855. He then studied law and was admitted to the bar at Bath in 1858. But he chose the larger field at Portland for the practice of his profession. In this, the chief city of his state, he rapidly rose to prominence. In 1869 he was chosen mayor of that city. Twice he was nominated by his party for judge of the supreme court of the state, and in 1888 was the Democratic nominee for governor, but it was the year of a presidential election and the Republicans carried the state. In September, 1887, he was appointed commissioner of the United States to settle the differences between the United States and Great Britain in respect to Canadian fisheries. And he was again appointed by President Cleveland a commissioner for the United States under the convention with Great Britain of February 8, 1896. The degree of LL. D. was conferred upon Judge Putnam in 1884 by Bowdoin College, and again in 1893 by Brown University.

The high reputation for ability, which the bench of the United States circuit court in the first circuit has always borne, it still maintains. To that bench Judge Putnam was appointed March 17, 1892. A long list of decisions on questions of every kind has been handed down by Judge Putnam since that date. The case of King *v.* McLean Asylum, 21 U. S. App. 407, 26 L. R. A. 784, in which Judge Putnam wrote the opinion of the circuit court of appeals, decided for the first time that a habeas corpus case involving the right to personal liberty was one of the controversies of which the Federal courts might take jurisdiction on the ground of diverse citizenship. The case of LePage Company *v.* Russia Cement Co. 5 U. S. App. 112, 17 L. R. A. 354, was one in which Judge Putnam held that the right to use one's own name as the trademark of an article might be denied when he had transferred his interest in and the goodwill of the business in which the trade name was used. In American Bell Teleph. Co. *v.* United States, 33 U. S. App. 236, on a bill by the United States to cancel the Berliner telephone patent, the opinion of Judge Putnam held, among other things, that a patent could not be canceled at suit by the United States because of the fact that the invention was covered by a prior patent. This decision was affirmed by the Supreme Court of the United States in 167 U. S. 224, 42 L. ed. 144. These merely illustrate the importance and variety of the cases already decided by Judge Putnam in the few years that he has been on the bench.

Railing at the Court.

"Every United States Supreme Court judge will stand by his party when great party interests are at stake," says a writer of

slashing ipse dixits in the "Indiana Law Journal." In proof of this he does not cite a single illustration of strict party division in any decision of that court, but refers to such a division by five justices sitting as members of the electoral commission. The fact is that in nearly every case of great political importance, from the time when the nation was stirred over the first legal tender case down to the recent political upheaval over the income tax decision, judges of both political parties have agreed in the decision of the court; and when there were several dissenters, they also represented both political parties. Acts of Congress which seemed far-reaching in political effect, and which were deemed the especial offspring of a particular political party, have been held unconstitutional by judges belonging to that party. In the face of all this, a statement that every one of these justices will stand by his party when great party interests are at stake is discreditably reckless and intemperate.

Adding Cost of Stamp Tax to Express Charges.

The right of an express company to increase its charges by the amount of the stamp tax, so that the shipper, and not the carrier, is really compelled to pay the tax, has been much discussed during the past six months, and was recently decided in the affirmative by Judge Lacombe of the United States circuit court, in the case of Crawford *v.* Hubbell, reported in the "New York Law Journal" of November 11, 1898. The power of Congress to compel the carrier to bear the burden is not denied, but the judge does not find that this power has been exercised.

This is not in accord with the opinion of Judge Tuley of Chicago, in People, *ex rel.* Western Steel Works, *v.* United States Express Co. 5 Detroit Legal News, No. 21, 30 Chicago Legal News, 408, 16 National Corporation Reporter, 1231. In that case it was held that the express company, and not the shipper, must pay the tax, and, while the company had not in form attempted to raise its rates, the judge said that, if the demand upon the shipper for the cost of the stamp could be considered as such an attempt, it would not be upheld, as the power to raise its rates did not include the power to make an arbitrary and horizontal increase of rates without regard to the service performed.

Judge Tuley's opinion is approved by the Michigan supreme court in Attorney General, *ex rel.* Moore, *v.* American Express Co. 77 N. W. 317, sustaining a mandamus to compel the express company to furnish the revenue stamp.

Judge Lacombe disposed of the case of Crawford *v.* Hubbell in an oral opinion in order to avoid delay so that the case might be carried to the Supreme Court of the United States as rapidly as possible.

Duty to Heat Passenger Cars.

There ought not to be much question about the obligation of a railroad company to keep passenger cars sufficiently heated to prevent discomfort and danger to the health of passengers. But there are very few cases in which the question has been decided. In Taylor *v.* Wabash R. Co. (Mo.) 42 L. R. A. 110, it was held improper to take the case from the jury on the ground that, as matter of law, the carrier was not liable where the action was for illness of a passenger caused by riding in an uncomfortably cold car. This decision was rendered by Division 1 of the Missouri supreme court, but, after the case was transferred to the court in banc, it was dismissed because of the plaintiff's death. The meager authorities, which are collected in a note to this case, do not much differ. They all recognize the duty to heat the cars. The performance of this duty is regulated by the New York act of June, 1887, which prohibits the use of stoves in cars, and this statute is held constitutional even as applied to interstate trains. New York, N. H. & H. R. Co. *v.* New York, 165 U. S. 628, 41 L. ed. 853.

The duty to heat street cars properly may next be considered. It is a question of no small importance to people of northern cities in winter. The fact that street-car rides are of short duration may make the duty to heat such cars less imperative than the duty to heat ordinary railroad trains. But the difference seems to be merely one of degree. The street-car companies ought to be compelled to make their cars warm enough for ordinary people to ride in them without exposing their health to danger.

Preference of Telephone Operatives on Receivership.

The first decision that applies to a telephone company the recognized doctrine of railroad receiverships, whereby preference is given to operating expenses over a pre-existing mort-

gage, was made in the late case of Keelyn v. Carolina Mutual Teleph. & Teleg. Co. (C. C. S. D. S. C.) 90 Fed. Rep. 29. The theory on which such preference is given for the current expenses of a railroad is that railroads are property of a public nature discharging a great public work, and that public interest requires that they be kept in operation. In the present case Judge Simonton considers that the reason of this doctrine applies quite as strongly to a telegraph and telephone company. He says: "Like railroads, these lines are very important instruments of interstate commerce. They are the means of communication between all points on the globe. They are of the most essential importance to the government in time of war, and to the people in time of peace." Concerning the claims of the operators in this case, he says: "They clung to their positions and stood by the corporation in despite of failure to secure pay. They, at a great sacrifice, kept it a living concern. They enabled it to retain its list of subscribers so that when it was offered for sale, instead of being an abandoned wreck, it was in active daily operation. The claims of those who furnished supplies are by no means as strong as these." An order was made for the payment of the wages of the employees for the period of ninety days before the receiver's appointment.

Our Spirit and Purpose Toward Dependent Peoples.

The idea that the American people are grabbing the Philippines as plunder seems to have got firmly fixed in the minds of some of our own people. They assail the motives as well as the judgment of the majority of their fellow citizens. This attitude of superior righteousness as well as superior wisdom is characteristic of some really honest and intelligent people; but it weakens their influence and cankers their judgment. Unmixed motives exist in the best of men but rarely; in a nation never. But the dominant purpose of this nation to-day toward the Philippines is rightly to discharge the obligation imposed upon it. The man, however learned and intellectual, who can see nothing but greed of gain and conquest in the minds of his fellow countrymen, may well fear that the defect is in himself. The great body of thoughtful Americans wish to know what ought to be done, not to have their motives misrepresented and denounced. The distinct purpose of the United States toward these dependent outside peoples must be to give them self government as fast as and as far as they are capable of exercising it. Failure to do this would indeed justify the offensive imputations that are now made upon our national intentions. But the supposition that this free people will try to keep other peoples as "subjects" when they have become fit to govern themselves should be left to our enemies; an American ought to have more faith in his own nation.

Injury to Employee by Poisonous Germs.

The question of an employer's liability for poisonous germs causing injury to an employee was recently decided by the Kansas City court of appeals in Hysell v. Swift & Co. This was an action against the proprietor of a slaughtering and packing establishment for the loss of an eye of a workman caused by a poisonous yellow rust that he was cleaning from an iron rail. This rust formed by blood and other organic matter adhering to the rail contained bacteria that destroyed the eye. The workman was ignorant of the danger, and the contention was that the employer knew or ought to have known it. The court held that a master must keep up with scientific development and knowledge as it may affect the character of his business, and become informed of such scientific knowledge as men of general education and information possess relative to the danger and hazard of the business, and give due warning of the dangers to his employees. But it was held that the master was not liable in this case because the injury could not have been reasonably anticipated. In proof of this it was shown that, while this yellowish dust fell and settled over fifteen or sixteen other persons engaged in the service, it injured none of them.

The principle of the decision is doubtless the true one, whether it is rightly applied to the facts or not. Not the possibility, but the reasonable probability, of danger, must be the basis of liability. The court, as an illustration, refers to the danger of putting persons to work with one who has tuberculosis. But if a person who has that disease in an advanced stage is put by an employer who knows the fact at work with others who do not know it, and they take the disease, there is much reason to urge his liability in the present state of knowledge as to the danger of that disease. The liability ultimately rests on two questions of fact: First, the knowledge of danger; second, the degree of the danger or the reasonable probability of injury.

Enforcement of the Interstate Commerce Act.

The impossibility of enforcing the Interstate Commerce Act as it now stands is emphatically stated in the Twelfth Annual Report of the Interstate Commerce Commission as follows:

"Until further and important legislation is enacted the best efforts at regulation must be feeble and disappointing . . .

"Meanwhile the situation has become intolerable both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other, and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as frequently to exceed the capacity of equipment; yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business, and secret rates accorded far below the standard of published charges. The general public gets little benefit from these reductions, for concessions are mainly confined to the heavier shippers. All this augments the advantages of large capital, and tends to the injury and often to the ruin of smaller dealers."

The demoralizing effect of widespread violations of law can hardly be overstated. There have been rumors of organized systems of unlawful business which relied for safety on secrecy of methods and records, as well as on the bribery of those who might discover their secrets. If the Interstate Commerce Act cannot be made effective, let it be repealed. The disgrace of unenforced laws ought not to be tolerated.

Judicial Opinions on Proposed Laws.

The submission of proposed laws to the supreme court to get its opinion as to their constitutionality has been advocated by many people as an important reform. It is obvious, of course, that much inconvenience and some hardships often result from the overthrow of statutes after they have been acted upon. The avoidance of these evils would be very desirable. Why, then, these people ask, should an unconstitutional provision not be declared so before its enactment, and not after it has been acted upon? Like many another invention, this plan involves more than its authors consider. As the court said in *Re Construction of Constitutional Provision* (S. D.) 10 L. R. A. 575, the judges in such case must act "both as court and counsel upon *ex parte* proceedings." The inestimable aid given in the determination of hard questions by the opposing arguments of counsel in actual litigation could not be had when giving advisory opinions about prospective legislation. This is the weak spot in the system, and it is not sufficiently appreciated by advocates of the proposed reform. They seem to assume that judges must be always ready to express final opinions on all legal questions without hesitation, just as the average client expects his attorney to know all the law offhand. The right of the legislature, or of the executive, or of both, to demand such opinions from the supreme court, is in fact created by the Constitutions of several states. The practical operation of the system may not have been sufficient to prove very much for or against it in most states. Doubtless the opinion of the court has in some cases prevented the enactment of invalid statutes, but in a case of real difficulty the opinion of the court given in advance of any litigation, and without opposing argument of counsel, can hardly be satisfactory. The plan is well characterized by the clear-headed editor of the "New York Law Journal," who says, "Superficially the idea is a taking one."

Confiscation Checked.

No more righteous decision, and none more needed for the protection of property rights, was ever rendered by the Supreme Court of the United States than that just handed down in the case of the Village of Norwood *v.* Baker. Assessments by the front foot levied without regard to special benefits on the abutting land, for the total value of a strip taken for a highway, and also for the expense of the proceeding, are declared unconstitutional as a taking of private property for public use without just compensation, and therefore a deprivation of property without due process of law. The court clearly lays down the broad and righteous doctrine that assessments for public improvements in substantial excess of the special benefits received are unconstitutional. Sheer confiscation under the guise of public improvements has become common. Humble owners of small lots in the suburbs of a city or town have found

themselves powerless to prevent an ordinance for paving their street and levying assessments therefor which wellnigh or altogether confiscate their lots. There have been cases, indeed, in which the legal authorities, including courts, which purport to do justice, have perpetrated the unparalleled atrocity of imposing upon the unfortunate people who have been robbed of their abutting lots a personal liability for the excess of the assessments over the value of the lots. This constitutes an iniquitous and impudent defiance of all constitutional rights. People living on a modest street, with little need of a pavement, and less ability to pay for it, have been compelled to submit to have the pavement made and then to have their property sold to pay the assessments for it, merely because the pavement was demanded for the benefit of the business portion of the town or for the profit of paving companies.

The assumption that special benefits to abutting lots must necessarily equal the total cost of a street pavement is at the bottom of all these front-foot assessments. But that assumption is gratuitous and false. The assessment may, and sometimes does, equal, and even exceed, the sum total of special benefits and the entire original value of the lot in addition. Such unconstitutional outrages could never flourish long if perpetrated on men who were able to fight for their rights. But they have usually fallen upon humble people who had bought low-priced lots in the mistaken faith that their property rights would be protected. This rank system of official robbery that has flourished through the tyranny or corruption of the municipal officers must now face the doctrine of the United States Supreme Court, that assessments for public improvements in substantial excess of special benefits are unconstitutional. On that judicial rock this system of confiscation by assessment must split. The true rule is plain. Assessments must be limited to special benefits received. If the benefits to the property to be assessed are less than the cost of the improvement, the balance of the cost must be paid by the general public.

Discrimination in Favor of Resident Creditors of Corporations.

Persons who deal with corporations may find an unusually far-reaching and important decision in Blake *v.* McClung, just decided by the Supreme Court of the United States. It holds that a state statute giving to residents of that state a priority over nonresidents in the distribution of the assets of a foreign corporation which, by filing its charter or articles of association in the state, is deemed a corporation of that state, is in violation of the constitutional guaranty of equal privileges and immunities of citizens, so far as it discriminates against citizens of other states. But it is held that such discrimination may be valid as against creditor corporations of other states, since they are not citizens within the constitutional guaranty of privileges and immunities. The claim that such nonresident creditor corporations were thereby denied the equal protection of the laws is met by saying that unless they are doing business within the state so as to be subject to process therein they are not within its jurisdiction so as to be entitled to the equal protection of the laws. Two justices dissented and contended that the statute only amounts to requiring a foreign corporation, as a condition of doing business in the state, to give to the residents thereof a prior security on the assets of the company therein. The dissenting opinion points out that in Fritts *v.* Palmer, 132 U. S. 282, 33 L. ed. 317, a Colorado statute was involved which provided that a mortgage given by a foreign corporation on property in the state for a debt created in another state should not take effect as against persons in that state until the liabilities of the corporation due to them at the time when the mortgage was recorded were paid, and that this statute was conceded by all parties to be constitutional, and was expressly declared so by the court. The language of the court in that case was plainly inconsistent with the present decision, but it must be regarded as an *obiter dictum* rather than a decision.

The present decision suggests some questions of great importance that it does not answer, respecting the constitutionality of discriminations against nonresidents in the matter of attachments upon the property of insolvents. It is shown in the note to Long *v.* Forest, 23 L. R. A. 33, that many such cases have given preference to domestic creditors. In its logical effect the present decision seems to deny the constitutionality of any discrimination between domestic creditors and other citizens of the United States in the distribution of an insolvent's estate. Upholding attachments of the former, but rejecting those of the latter, would seem to violate the principle now established.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 41, Part 6, and Book 42, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Appeal.

The sufficiency of merely constructive notice of a writ of error given by the records of the court, as a substitute for personal service, is sustained in State, *ex rel.* Andreu, *v.* Canfield (Fla.) 42 L. R. A. 72. The claim was that this did not constitute due process of law, but the court held that the writ of error was not a new and original suit, and therefore did not require the same strictness of service that was necessary in bringing a new suit.

Bigamy.

Persons living together ostensibly as husband and wife, although illicit relations have ceased because of physical incapacity, are held, in Cox *v.* State (Ala.) 41 L. R. A. 760, to be cohabiting within the meaning of a statute against bigamy, as the law intended to prevent the public scandal and disgrace attendant upon an appearance of such illicit relations.

Bills and Notes.

A condition on the delivery of a note to the payee or his agent, that it shall take effect only when signed by another person, is held, in Hurt *v.* Ford (Mo.) 41 L. R. A. 823, ineffectual, but the delivery is deemed absolute.

Building and Loan Associations.

Paid-up stock not being authorized by the Illinois statute governing building associations, it is held, in Rhodes *v.* Missouri Savings & L. Asso. (Ill.) 42 L. R. A. 93, that such stock cannot be issued in that state by a foreign corporation.

Buildings.

Mere advertisers who place advertisements upon a signboard set up upon the roof of a building, by virtue of what is called a lease of part of the roof, but which does not give them possession of any part of the building, although they are required to keep in repair the portion of roof which they use, are held, in Reynolds v. Van Beuren (N. Y.) 42 L. R. A. 129, to be mere licensees who are not liable to a stranger for the falling of the signboard from the building during a high wind.

Claims.

The word "claim" in a statute respecting actions against the state is held, in Northwestern & P. H. Bank v. State (Wash.) 42 L. R. A. 33, to be equivalent to "cause of action," and therefore to include an action contesting the priority of a lien in favor of the state.

The unnecessary destruction of healthy and valuable cows by state officials, who suppose them to be diseased, after applying the so-called tuberculin test, is held, in Houston v. State (Wis.) 42 L. R. A. 39, to give the owner no claim against the state, within the meaning of statutes relating to claims, as that does not include demands based upon unlawful and tortious acts.

Contracts.

The illegality of a contract between the owners of tugs, to monopolize the business, is held, in Scott v. Wiswall (C. C. App. 2d C.) 42 L. R. A. 85, insufficient to prevent recovery by one of the tugs on an entirely distinct contract for towage. This clearly presents the distinction between actions upon illegal contracts and those which do not grow out of that contract.

Copyright.

A lease of the reference books of a mercantile agency to subscribers, retaining title and providing that the books shall be returned when the subscription expires, is held, in Jewelers' Mercantile Agency v. Jewelers' Weekly Pub. Co. (N. Y.) 41 L. R. A. 846, to constitute a publication which will defeat a common-law copyright.

Courts.

A judge who owns real estate in a city, that is taxable for the city's bonded indebtedness, is held, in Meyer v. San Diego (Cal.) 41 L. R. A. 762, to be disqualified to sit on a contest of the validity of a contract which will involve the creation of a bonded debt of the city to a large amount, necessitating a special tax for forty years.

Death.

The loss of the services of a minor child killed by the fault of another is held, in Gulf, C. & S. F. R. Co. v. Beall (Tex.) 41 L. R. A. 807, to give the parents no common-law right of action against the party in fault. There has been a difference of authorities on this question, the preponderance of which supports the present decision, but the cases which reach this conclusion do so on different grounds, as appears from the note to this case.

Eminent Domain.

On the condemnation of land which is subject to an inchoate right of dower, it is held, in Flynn v. Flynn (Mass.) 42 L. R. A. 98, that the wife has no such interest as will entitle her to have any part of the money paid to her or set aside for her benefit on the contingency of her surviving her husband.

Evidence.

An attempt to procure false testimony or to corrupt jurors is held, in McHugh v. McHugh (Pa.) 41 L. R. A. 805, to be provable for the purpose of raising a presumption against the guilty party, even if such party is an executrix, but is personally interested in the litigation.

The presumption of a carrier's negligence in case of injury to a passenger is upheld in Whalen v. Consolidated Traction Co. (N. J.) 41 L. R. A. 836, where a passenger on a trolley car was thrown off from the running board, upon which he stood, by the conductor's stumbling against him, though the cause of the stumbling was not shown.

Statements by an injured person to show his own contributory negligence, though made after the injury, are held, in Helman v. Pittsburg, C. C. & St. L. R. Co. (Ohio) 41 L. R. A.

86v, to be admissible in an action brought after his death by an administrator for the injury causing his death.

Fences.

The liability of a landowner for the defective condition of that part of a division fence which, by agreement, the other proprietor was required to keep in repair, is denied in Quinn v. Crimmings (Mass.) 42 L. R. A. 101.

Gift.

A delivery to a donee of a deposit book of a savings bank containing entries of deposits to the donor's credit, when accompanied with appropriate words of gift, is held, in Polley v. Hicks (Ohio) 41 L. R. A. 858, sufficient delivery to constitute a valid gift, without any written transfer.

Hacks.

A grant of the exclusive privilege of entering station grounds to solicit passengers or baggage is held valid in New York, N. H. & H. R. Co. v. Scovill (Conn.) 42 L. R. A. 157, if its terms are not inconsistent with the reasonable accommodation of the public.

Husband and Wife.

A woman who learned on the day of her marriage, soon after the ceremony, that her husband was constitutionally afflicted with syphilis, and in a state in which his chances of cure were very remote, and thereupon refused to live with him as his wife, was held, in Smith v. Smith (Mass.) 41 L. R. A. 800, entitled to an annulment of the marriage on the ground of fraud.

The communication of syphilis to a wife by her husband, who has the disease in the tertiary stage, and is probably incurable, is held, in McMahen v. McMahen (Pa.) 41 L. R. A. 802, to entitle her to a divorce for cruel and barbarous treatment, endangering her life, or rendering her condition intolerable and life burdensome.

Incompetent Persons.

The fact that the mortgagor or occupant of mortgaged premises has become insane is held, in Lundberg v. Davidson (Minn.) 42 L. R. A. 103, insufficient to suspend the power of sale in the mortgage.

Injunction.

An injunction against the institution of prosecutions for criminal offenses, whether for violation of state statutes or municipal ordinances, is denied in Paulk v. Sycamore (Ga.) 41 L. R. A. 772, even if the constitutionality of the statute, or the validity or reasonableness of the ordinance, is denied.

Insurance.

Insurance of a lessor's interest in premises on which the lessee also has procured insurance for the lessor's benefit, as his lease required him to do, is held, in Sun Insurance Office v. Varble (Ky.) 41 L. R. A. 792, valid as to that part of the loss which remains after the application of the policies taken by the lessee, where they fail to cover the whole loss because of a stipulation for prorating.

The receipt by an agent from his insurance company, of a policy to be unconditionally delivered to the applicant, is held, in New York Life Ins. Co. v. Babcock (Ga.) 42 L. R. A. 99, to be equivalent to a delivery to the insured himself under a contract making delivery essential to its validity.

A provision that a life insurance policy shall not take effect until the payment of the first premium is held, in Stewart v. Union Mut. L. Ins. Co. (N. Y.) 42 L. R. A. 147, not to defeat the insurance, where a note for the premium was accepted and, at its maturity, a check taken, with the understanding that it would be satisfactory if it was paid the next week, although the insured died before the check was paid.

Justice of the Peace.

The exclusion of the justices of the peace of a single town from the exercise of any criminal jurisdiction is held, in People, *ex rel.* Burby, v. Howland (N. Y.) 41 L. R. A. 838, to be in violation of a constitutional provision for justices of the peace, without expressly stating what a justice of the peace shall be. This is on the ground that criminal jurisdiction has always belonged to those courts, and a local statute denying its exercise is equivalent to a partial abolition of the office.

Landlord and Tenant.

Condemnation of leased premises, without actual eviction, is held, in Rhode Island Hospital Trust Co. *v.* Hayden (R. I.) 42 L. R. A. 107, insufficient to relieve the tenant from liability.

Negligence.

The doctrine which holds railroad companies liable for injuries to children playing on turntables which are left unguarded is denied in Delaware, L. & W. R. Co. *v.* Reich (N. J.) 41 L. R. A. 831. The conflicting decisions on this subject are reviewed by the court.

Poor and Poor Laws.

The liability of the estate of a lunatic who has been supported by the county as a pauper is maintained in McNairy County *v.* McCoin (Tenn.) 41 L. R. A. 862, in an action by the county for indemnity. But in Albany *v.* McNamara (N. Y.) 6 L. R. A. 212, it was held that a supposed pauper aided by the county was not liable to repay the expenditure, at least in the absence of some application or request for assistance other than the usual solicitation for charity made to the poor authorities.

Proximate Cause.

Negligence in storing oil upon a station platform in violation of statute is held, in Stone *v.* Boston & A. R. Co. (Mass.) 41 L. R. A. 794, not to be the proximate cause of damage by fire caused by the dropping of a match by a person delivering goods at the depot, and who is not employed by the carrier.

Receivers.

The discretion of a receiver in respect to details in the management of a street railroad is held, in Morley *v.* Snow (Mich.) 41 L. R. A. 817, to extend to the adoption of metal safes for receiving fares, into which the passengers are required to put the fare, while the conductor presses a button which rings a bell and registers the fare.

Reward.

The offer of a reward for "the arrest and conviction" of an unknown perpetrator of a crime is construed, in Haskell *v.* Davidson (Me.) 42 L. R. A. 155, so as to entitle a person to the reward when he obtains the facts to secure the arrest and conviction, without personally making the arrest.

Set-Off.

A set-off of judgments was refused in Cleveland *v.* McCanna (N. D.) 41 L. R. A. 852, where one judgment was claimed as exempt, and the set-off would defeat the exemption laws.

Statutes.

A statute which, although expressed in general terms, enumerates restrictions which constitute identification, rather than classification, and is applicable only to a single highway improvement, is held, in *Re* Henneberger (N. Y.) 42 L. R. A. 132, to be in violation of a constitutional provision against local laws.

The grant by a city to a subway company, of the right to lay wires and construct its subway under the surface of streets, is sustained in State, *ex rel.* National Subway Company, *v.* St. Louis (Mo.) 42 L. R. A. 113, which substantially overrules a former decision.

Sunday.

Statutes making it unlawful to play baseball on Sunday are held constitutional in State *v.* Powell (Ohio) 41 L. R. A. 854.

Trusts.

A provision in a law creating a trust, authorizing beneficiaries to remove the trustee and appoint another without aid of the courts, for what they deem good and sufficient cause, is upheld in May *v.* May (D. C. App.) 41 L. R. A. 767, although it is held that such power must not be exercised wantonly, capriciously, or arbitrarily. The point seems to be quite unusual.

The necessity of examining the trust instrument itself, on taking a pledge of shares of stock from a trustee at the request of one who

claimed to be the sole beneficiary, is declared in First National Bank v. National Broadway Bank (N. Y.) 42 L. R. A. 139. The right of the beneficiary to alienate an interest in the trust property is sustained on the ground that it depends on the law of another state in which the trust was created, although such alienation is expressly prohibited by the laws of the forum where the beneficiary resides.

Waters.

The discharge of mineral water from an artesian well after use in a public bath house by persons afflicted with infectious, syphilitic, or other disorders, through a tile drain or otherwise, into a stream which constitutes the only available drainage without building a very costly sewer, is held, in Barnard v. Shirley (Ind.) 41 L. R. A. 737, to be lawful. This materially limits a former decision of the court. This right to discharge waters from an artesian well is a novel one.

Wills.

The intention to make no provision for a child already born is held, in Carpenter v. Snow (Mich.) 41 L. R. A. 820, not necessary to be shown by the will itself, under a statute giving the child a right to share as in case of intestacy, if it appears that the omission was not intentional. But as to a child afterwards born the statute provides that such intention must "be apparent from the will," and this is not shown by merely giving all testator's property to his wife.

The word "stock" in a bequest of "all my notes, bonds, stock, and money on hand," is held, in Capehart v. Burrus (N. C.) 42 L.R.A. 152, not to include live stock, such as horses and mules, although the testator owned live stock, but no stock securities, when he died, or when the will was written.

Recent Articles in Law Journals and Reviews.

"Proof of Character by Personal Knowledge or Opinion: Its History."—33 Law Journal, 594.

"Absolute Deed of a Homestead as a Mortgage."—47 Central Law Journal, 463.

"The Guardian Ad Litem."—4 Western Reserve Law Journal, 178.

"The Scintilla Rule—A Symposium."—4 Western Reserve Law Journal, 169.

"Uniform State Laws."—6 American Lawyer, 453.

"Unveiling of the Statute of Rufus Choate."—6 American Lawyer, 451.

"Proposed Changes in the Law of Expert Testimony."—6 American Lawyer, 445.

"Shooting at Escaping Convicts."—20 Australian Law Times, 76.

"The Degree of Proof Necessary when Crime is Charged in a Civil Action."—47 Central Law Journal, 482.

"A Proposed New Definition of a Tort."—12 Harvard Law Review, 335.

"Massachusetts as a Philanthropic Robber."—12 Harvard Law Review, 316.

"Constitutional Aspects of Annexation."—12 Harvard Law Review, 291.

"The Beginnings of Civil Service Reform."—8 Yale Law Journal, 134.

"The Causes and Results of Our War with Spain from a Legal Standpoint."—8 Yale Law Journal, 119.

"Corporations under Bankruptcy Act of 1898."—8 Yale Law Journal, 105.

"Vexatious Actions and Pleadings."—18 Canadian Law Times, 251.

"Arrest of Absconding Debtors."—18 Canadian Law Times, 241.

"The King's Justice in the Early Middle Ages."—12 Harvard Law Review, 227.

"Unfair Competition by the Deceptive Use of One's Own Name."—12 Harvard Law Review, 243.

"Powers Coupled with an Interest."—12 Harvard Law Review, 262.

New Books.

"Annual Digest of Decisions of All Federal Courts and of the Commissioner of Patents, Relating to Patents, Trademarks, Labels, and Copyrights for 1898." By Louis M. Sanders. (A. E. Robinson, 87 Nassau St., New York.) 1 Vol. $3.

"Our Treaty with Spain." Annotated by Charles Henry Butler. (Washington Law Book Co., Washington, D. C.) Paper, .25.

"Rules, Orders, and Forms in Bankruptcy Adopted by the Supreme Court of the United States." Printed at Government Printing Office. (Washington Law Book Co.) 1 Vol. Paper, $1.

"Law and Practice in Bankruptcy." By Untermyer & Kelley. With Forms, Annotations, and Rules of Court. (Diossy Law Book Co., New York.) 1 Vol. $3.50.

"Collier's Rules and Forms in Bankruptcy." Containing Official Rules, Official Forms, and United States Equity Rules. (Matthew Bender, Albany, N. Y.) 1 Vol. $1.50.

"Illinois Criminal Law and Practice." By Ossian Cameron. (E. B. Myers & Co., Chicago, Ill.) 1 Vol. $5 50.

"Hainer's Modern Law of Municipal Securities." (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. $6.

"Robinson's Indiana County and Township Officers." 2d ed. (The Bowen-Merrill Co.) 1 Vol. $6.

"United States Court of Claims Reports." Vol. 33. (L. C. P. Co., Rochester, N.Y.) $2.

"The National Bankruptcy Law." Address before the Commercial Club of Kansas City, Missouri, by Alexander New.

"Annotated United States War Revenue Law." With Treasury Department Rulings. By Carmody & Peasley. (Dissell Publishing Co., Waterbury, Conn.) 1 Vol. 600 pages, $2.50. Cloth, $2.

The Humorous Side.

AN IMPOSSIBLE POSSIBILITY.—The foreman of a jury in a recent murder trial reported: "The probability, or even possibility, of this jury ever agreeing is impossible, in my opinion."

A BAD HABIT.—That suicide is a "pernicious habit that obviously tends to shorten life" is the defense set up by a life insurance company in a recent action on a policy which expressly excluded liability for such reprehensible habits. It must be conceded that suicide if it becomes habitual would have the tendency described.

NAMES OF LITIGANTS.—In an old Indiana case a man named Shallcross undertook to live up to his name by running an unlawful ferry, but the decision of the court said to him you "shall not cross."

The name of an adopted citizen of the Chickasaw nation, whose adoption was canceled and who was thereupon expelled, was "Run Hannah."

A California woman who said in her will, "I have no fear of the hereafter. O my Lord, teach me to live right; then in dying there is no sting,"—bore the prophetic Christian name of "Euthanasia."

The name "Dr. Physick," which might be looked for in some allegory, appears as the name of a real person in a recent law report.

Some peculiarly suggestive combinations of names in the titles of cases are these:

People *v.* Kaiser; Priest *v.* Lackey; Kick *v.* Merry; Protected Home Circle *v.* Winter; Grant *v.* Lookout Mountain Co.

In reminiscences of the early Minnesota bar Judge Charles E. Flandrau tells in the "Minnesota Law Journal" of an argument before the supreme court in 1853 by Ex-Chief Justice Goodrich, on behalf of an Indian convicted of murder. The Indian's name was "Zu-ai-za," but, as the counsel could not pronounce it, he always referred to him in his argument as "my client, Ahasuerus."

WASN'T FEELING WELL.—A correspondent sends the following verbatim copy of an answer by a Georgia justice of the peace to a writ of certiorari:

"answer.

"to his honor, W. N. Spence, Judge:

"of the Superior Court of Decatur County, Georgia.

"sir, according to an order i Received from you from a Certiorari in answer to a case from my Court of the 1324th district G. M. case —— vs. ——. Trial Term on the 8th day of January, 1898, before a Jury answer to be made by the second Monday in May of the Superior Court May Term, 1898. Case tried on the 8th day of January, 1898, was —— vs. —— —. Mortgage foreclosure for $15 45. was tried that day before a Jury of 5 men as clever men as There is in the District and 11 thought that they done Justice to the Cace and I think so yet. these same papers was Tried before me in this Court House in December Term, 1897. i will admit that there was moves in the trial to keep the papers from the Jury But I did not see how that they would be right for that was what the Defendant called for a Jury for was to seek his Rights. Defendant seem to want to keep all the money he could get hold of for he has not paid no costs on my side of the house yet Not even the costs of these papers And I would not of thought that the defendant would of keeping the note and mortgage foreclosure from the Jury when he appealed himself to the Jury. I will admit of my errors as the defendant has accused me of but I recon that there is not many of us but what does error sometimes &c And Judge Feeling that I have done the best that I could under the circumstances for I am Not feeling well to-day Nohow.

"And Judge I will assign officially as I assign all other papers.

"——————————

"N. P. and Ex Officio J. P."

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In this the latest and best work on the subject the author, Mr. JOHN W. SMITH, of the Chicago Bar, has stated the general law on the subject with the reasons underlying it. The modifications of it under special circumstances are carefully noted, while in the notes nearly 5000 cases (all to date of publication) are cited and specially applied, and in some instances set out at length. The utility of this form will be recognized at a glance.

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